IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

FRIDAY, THE 9TH MARCH 2007 / 18TH PHALGUNA 1928

OP.No. 14936 of 2002(C)

PETITIONER:

P.J.MATHEW, S/O.JOSEPH,AGED 54 YEARS,
SENIOR SUPERINTENDENT,REVENUE DIVISIONAL OFFICE,
MUVATTUPUZHA (RESIDING AT PONNEDUTHA KALLAL
P.O. ONNUKAL, (VIA) KOTHAMANGALAM.

BY ADV. SRI.V.A.MUHAMMED

RESPONDENTS:

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1. **THE SECRETARY TO GOVERNMENT**
   DEPARTMENT OF REVENUE,SECRETARIAT,TRIVANDRUM.

2. **THE COMMISSIONER (LAND REVENUE),**
   TRIVANDRUM.

BY GOVERNMENT PLEADER SRI.P.K.RAVIKRISHNAN

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 09/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON CMP. NO.25236/2002 IN OP. NO.14936/2002

DISMISSED

09.03.2007 **SD/- S.SIRI JAGAN, JUDGE**

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1:- COPY OF THE PROCEEDINGS NO.TR. T3.22734/97 OF THE 2ND RESPONDENT.

EXT.P2:- COPY OF THE REPRESENTATION SUBMITTED BEFORE THE 1ST RESPONDENT.

EXT.P3:- COPY OF THE JUDGMENT IN OP.NO.931/2000.

EXT.P4:- COPY OF THE ORDER IN CMP. NO. 21566/95 IN OP. NO.9871/95.

EXT.P5:- COPY OF THE REPRESENTATION SUBMITTED BEFORE THE 2ND RESPONDENT

EXT.P6:- COPY OF THE JUDGMENT IN OP. NO.9871/95.

EXT.P7:- COPY OF THE GO(Rt) NO.1939/2000 RD OF THE GOVERNMENT.

EXT.P8:- COPY OF THE JUDGMENT IN OP. NO.14278/2000.

EXT.P9:- COPY OF THE JUDGMENT IN WA.NO.1371/2000.

EXT.P10:- COPY OF THE GO(Rt) NO.230/02/RD OF THE GOVERNMENT.

EXT.P11:- COPY OF THE LIST OF PERSONS WHO WERE GIVEN RANK IN THE CADRE OF U.D. CLERK AFTER 12.5.72.

EXT.P12:- COPY OF THE COMPARATIVE STATEMENT LIST OF PERSONS.

/TRUE COPY/

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S. SIRI JAGAN, J.

O.P.NO.14936 OF 2002

DATED THIS THE 9th DAY OF MARCH, 2007

JUDGMENT

The petitioner, after fighting hard for his due promotion for years ultimately, retired from service on 31.12.02 without succeeding in his efforts inspite of several judgments from this Court. He now in this original petition claims notional promotion as Deputy Tahsildar, Tahsildar and Deputy Collector with effect from the date promotion was given to his juniors. The facts necessary for disposal of this original petition are as follows:

2. The petitioner originally entered service of the Government of Kerala on 16.4.1968 as L.D. Clerk. As an inter-departmental transferee, he joined Revenue Department on 28.10.70. He was promoted as U.D. Clerk on 12.5.72 and Head Clerk as 9.5.1984. Thereafter the Revenue and Village establishments were integrated as one service on 10.9.84. An integrated seniority list was also published. In between on 12.6.85, special rules came into force for the Revenue service in which the probation period fixed for the L.D. Clerks was two years. But earlier, the petitioner's probation was declared after one year on 28.10.7, as per the general rules under the

KS & SSR, as per which the period of probation prescribed was only one year. However, later, on the ground that since as per the special rules introduced on 12.6.85, the probation period was two years and the petitioner was given promotion as U.D. Clerk before completing probation, he was pushed down in the seniority list. Ever since then he has been fighting for restoration of his seniority. He filed several writ petitions. Ultimately in W.A.No.1371/2000 a Division Bench of this Court passed the following directions:

> "Having perused the records, and heard learned counsel on both sides, it appears to us that the only request pressed in the Writ Appeal is that Government should be directed to take a decision on the claim of the appellant for promotion to the post of Deputy Collector in the light of deemed date of promotion in the cadre of U.D. Clerk and consequent seniority. The learned Single Judge was pleased to dismiss the Original petition on the ground that the latest seniority list of U.D. Clerks had not been published. But, it is informed before us that it has now been published and is available. We dispose of this appeal, by directing the State Government to reconsider the question of promotion of the appellant on the basis of the deemed date of promotion given to him in the cadre of U.D. Clerk. All his further promotions may be reexamined in the light of the applicable rules and if there is merit in the claim of the appellant to be promoted to the post of Deputy Collector, the Government should give it to him expeditiously, so that the appellant will have the satisfaction of having retired as Deputy Collector before or when he retires in December, 2002. It is preferable that the Government consider the claim of the appellant and decide thereupon within three months from today"

3. Inspite of this judgment, by Ext.P10 order the Government simply rejected his claim for promotion on the basis of that despite the deemed date of promotion given to him in the cadre of U.D. Clerk, since subsequently the integrated seniority list was published the earlier list which was under challenge by the petitioner has become obsolete. Ext.P10 order is under challenge in this original petition.

4. I have heard the learned counsel for the petitioner as also the learned Government pleader. On the strength of the counter affidavit filed by the Government, the Government pleader supports Ext.P10 and reiterates that once the integrated seniority list has come into force, the petitioner can claim promotion only in accordance with the seniority in the integrated list.

5. I have considered the rival contentions in detail. I am absolutely satisfied that the Government misdirected itself in passing Ext.P10 order. In Ext.P9 judgment, it has been specifically directed that the State Government should reconsider the question of promotion of the petitioner on the basis of the deemed date of promotion given to him in the cadre of U.D. Clerk. The deemed date of promotion as per Ext.P1 is 28.10.1971. Therefore notwithstanding the fact that an integrated seniority list has come into force the petitioner's seniority as among others in his parent department ought to have been refixed not only in the earlier list dated 11.5.99 but also

in the integrated seniority list based on the deemed date of promotion of the petitioner as U.D. Clerk which obviously has not been done.

6. The learned Government pleader was unable to point out any reason for not doing so. Apparently the whole thing was because of the fact that the authorities took a totally unreasonable and unsustainable stand that by applying the special rules which came into force on 12.6.85, the petitioner's date of promotion as U.D. Clerk should be postponed by one more year. I am at a loss to understand how the special rules which came into force on 12.6.85 would apply to a person whose probation has been declared on 28.10.71, that too in accordance with the general rules applicable to him under the KS&SSR at the relevant time.

7. For the above reasons it is abundantly clear that great injustice has been done to the petitioner in the matter of promotion in so far as he has been unjustly brought down in the seniority list as a result of which he had not been given promotions on the due dates and his juniors in service were promoted ahead of him. He would submit that several of his juniors including his immediate junior Smt. P.T. Annamma have been promoted to the post of Deputy Tahsildar, Tahsildar and Deputy Collector ahead of him. Since the petitioner is unable to specify the dates of promotion of his immediate junior namely Smt. P.T. Annamma, the petitioner would now be satisfied with notional promotion from the date of promotion of another junior

by name Sri. Abraham Mathew who joined the Revenue Department on 16.3.71 whereas the petitioner joined on 28.10.70. The said Sri. Abraham Mathew was promoted as Deputy Tahsildar on 22.2.88 as Tahsildar on 14.9.94 and District Collector in 2000,which fact is not disputed by the respondents.

8. In the above circumstances, I am satisfied that the petitioner should be given notional promotion as Deputy Tahsildar, Tahsildar and Deputy Collector atleast from the dates when Sri. Abraham Mathew was promoted to those posts. Accordingly, I direct the respondents to assign notional dates of promotion to the petitioner with effect from the dates when Sri. Abraham Mathew was promoted as Deputy Tahsildar, Tahsildar and Deputy Collector as above and fix his pay and consequent pensionary benefits accordingly. However, I make it clear that the petitioner would not be entitled to any arrears of monetary benefits arising out of such promotion except arrears of retirement benefits. Orders in this regard shall be passed within a period of two months from the date of receipt of a copy of this judgment and arrears of retirement benefits shall be disbursed to him within a further period of one month therefrom.

The original petition is allowed as above.

S. SIRI JAGAN, JUDGE

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